

BOARD OF ADJUSTMENT REPORT



MEETING DATE: 9/3/2003

ITEM NO. _____

ACTION REQUESTED: Zoning Ordinance Variance

SUBJECT

Khalaj Residence

REQUEST

Request to approve a variance from the 24-foot height restriction to allow a 26-foot ridgeline on a property located at 12670 E Cochise Drive with Single Family Residential, Environmentally Sensitive Lands zoning (R1-43 ESL).

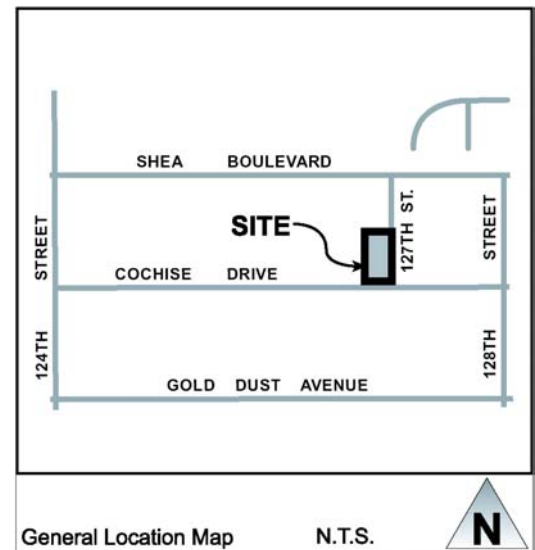
6-BA-2003

OWNER/ APPLICANT CONTACT

David Khalaj
602-722-4457

LOCATION

12670 E Cochise Dr



PUBLIC COMMENT

The applicant has sent out notices to surrounding property owners; the City has also sent out notices to 21 property owners within 300 feet of the subject property.

- Two (2) letters of support have been received from neighbors.
- Staff received one (1) phone call requesting additional information; the caller indicated that the applicant should be required to comply with the provisions of the Ordinance applicable to the site.

ZONING

The lot is zoned R1-43 ESL (Single Family Residential, Environmentally Sensitive Lands).

DEVELOPMENT CONTEXT

The undeveloped, 1.16+/- acre parcel is located at 12670 E Cochise Drive, which is west of 128th Street, south of Shea Boulevard, and north of Gold Dust Avenue.

The site has a rural desert character and is located within the Environmentally Sensitive Lands Ordinance area and requires the preservation of Natural Area Open Space (NAOS).

ORDINANCE REQUIREMENTS

Article VI, Section 6.1070.B.1.b of the Zoning Ordinance limits the maximum allowed building height to twenty-four (24) feet above natural grade in single-family residential ESL (R1 ESL) districts.

History

ESLO 1	1991	30-ft height limit
ESLO 2	2002	26-ft
ESLO 2-Update	2003	24-ft

Ordinance Applicability

The Scottsdale City Council adopted the 24-foot building height, along with other revisions, to the Environmentally Sensitive Lands Ordinance (ESLO-2 Update) on April 1, 2003, with the revised Ordinance coming into effect 30 days later, on May 1, 2003.

A building permit must be issued prior to the new ordinance coming into effect in order for the provision of the previous Ordinance to apply.

**APPLICANT'S
PROPOSAL**

September 3, 2003 Update: This case was originally heard by the Board on August 6, 2003 when the appellant had requested a 28 feet building height. At the hearing the appellant's representative requested continuance of the case to September 3, 2003 to allow the application to be modified to show a reduced building height of 26 feet, to be consistent with the height requirements in effect at that time of submittal. The Board approved the continuance and the application has been modified to 26 feet.

The request is to allow a single-family home to be built to a height of twenty-six (26) feet above natural grade, rather than the twenty-four (24) feet currently provided by the Zoning Ordinance.

The appellant maintains that, prior to submittal, the City had indicated to him that the established building height for this area was 26 feet. The appellant submitted plans for development of a 7,900 square-foot single-family home on April 25, 2003, prior to May 1, 2003, the day the new ESL Ordinance took effect.

The appellant also notes that five (5) existing residences located in the immediate vicinity and essentially surrounding his lot all have heights above the current requirement of 24 feet. A surveyor was hired by the appellant to geometrically calculate the heights of the surrounding homes and the following heights were determined. See *Attachment 8*.

FINDINGS

- 1. That there are special circumstances applying to the property referred to in the application, which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address:**

The appellant states that the special circumstances pertaining to this property are that many of the existing residences in the area were allowed a twenty-six (26) to thirty (30) building height.

Staff notes that the current 24-foot building height provisions of the R1-43 ESL zoning district apply to new residences receiving building permits on or after May 1, 2003. Although the adjacent buildings have higher heights, as allowed by a previous version of the Ordinance, the current 24-foot building heights apply to this case.

- 2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district:**

The appellant states that this building should benefit from previous standards applied to five (5) other homes located in the immediate vicinity of the subject lot, which contain the same approximate building height being requested.

Staff observes that the adjacent homes were built under the provisions of the previous ESL Ordinance, which allowed for higher building heights ranging from twenty-six (26) to thirty (30) feet.

- 3. That special circumstances were not created by the owner or applicant:**

The appellant indicates that the house plans for the site were submitted to the City on April 25, 2003. This was approximately one week prior to the current version of the ESL Ordinance that came into effect on May 1, 2003. The appellant also indicates that he did not have control over the length of time required by City staff to review these plans and that during this review period, the lower building height requirement was implemented.

Staff again notes that a building will only be held to a previous standard if the building permit is issued prior to the date new requirements come into effect. If a building permit has not yet been issued, City policy maintains, the plans are reviewed under the provisions of the current version of the Ordinance.

- 4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general:**

The appellant states that the requested 26-foot building height will not be detrimental to persons residing in the vicinity, to adjacent property, the neighborhood, or the general public welfare since the requested height is currently existing on the adjacent lots.

The principle of maintaining low building heights in the Environmentally Sensitive Lands Ordinance is to protect and preserve significant natural and visual resources, to reduce the visual impact of building, and to maintain the rural desert character of the area.

STAFF CONTACT

Al Ward, Senior Planner
Report Author
Phone: 480-312-7067
E-mail: AWard@ScottsdaleAZ.gov

ATTACHMENTS

1. Application
2. Background Information
3. Justification
4. Project Narrative
5. Context Aerial
6. Aerial Close-Up
7. Zoning Map
8. Comparison of Surrounding Properties
9. Proposed Site Plan
10. DRAFT August 6, 2003 Minutes



PROJECT APPLICATION
COMMUNITY DEVELOPMENT
7447 E. INDIAN SCHOOL ROAD
SCOTTSDALE, AZ 85251
(480) 312-7000 FAX (480) 312-7088

Note:
 Coordinator signature
 required prior to
 submittal.

<input type="checkbox"/> GEN'L PLAN AMENDMENT	<input type="checkbox"/> MASTER SIGN PROGRAM
<input type="checkbox"/> REZONING	<input type="checkbox"/> LOT SPLIT
<input type="checkbox"/> PRELIMINARY PLAT	<input checked="" type="checkbox"/> VARIANCE
<input type="checkbox"/> USE PERMIT	<input type="checkbox"/> ABANDONMENT
<input type="checkbox"/> DEVELOPMENT REVIEW	<input type="checkbox"/> OTHER

CASE # 6-BA-03
~~544-PA-03~~
 Q.S. 28-58
 PROJECT # 304-PA-03

APPLICANT FILL OUT BELOW

PROJECT NAME DAVID KHALAT		PROJECT LOCATION (ADDRESS) 12670 E COCHISE	
REQUEST MAINTAIN A RIDGE HT CONSISTANT WITH SURROUNDING PROPERTIES - 30'		CURRENT ZONING R1-43 ESL	
		PARCEL IN ACRES -- NET: .944 GROSS: 1.162	
		BOOK, MAP PARCEL 217 - 32 - 012C	
Current OWNER Name DAVID KHALAT	Street Address	Phone	
Company	City/State/Zip	FAX	
DEVELOPER Name TOTHI KOSOV	Street Address	Phone 480	
Company KODIAC BUILDERS	City/State/Zip	FAX 540-3295	
ARCHITECT Name INTIMATE APPROACH	Street Address 2075. RUSH	Phone 480	
Company VITO DASCOLI	City/State/Zip QUANDLER	FAX 705-5523	
ENGINEER Name MO	Street Address	Phone	
Company	City/State/Zip SCOTTSDALE AZ	FAX	

The owner shall designate either himself, or his architect, engineer, or agent as the coordinator for the project. This person will attend pre-application conferences, and will receive the agenda, recommendations and case reports. All contacts will be made for this project through the person named as coordinator below.

APPLICANT/COORDINATOR NAME DAVID KHALAT	Street Address	Phone
Company	City/State/Zip	FAX
		e-mail

OWNER'S SIGNATURE

DAVID KHALAT

PRINT NAME

REPRESENTING

APPLICANT'S SIGNATURE

DAVID KHALAT

PRINT NAME

REPRESENTING

OFFICIAL USE ONLY

YOUR STAFF COORDINATOR: Dean Ward 7/2/03 (480) 312- 7067 PRE-APP. DATE 6/30/03
 THIS APPLICATION NEEDS A: ☒ NEW # OR ☐ OLD PROJECT #

ATTACHMENT #1

Background Information
For Board of Adjustment



DATE _____
APPROVED AS PRESENTED _____
APPROVED W/STIP _____
DENIED _____

CASE # 304-PA-03
PROJECT # 304-PA-03
CONTINUED TO _____
HEARING DATE 08.06.03
CHAIRMAN VAL

APPLICANT TO FILL OUT THIS PORTION

✓ VARIANCE REQUESTED AT (STREET ADDRESS WHERE VARIANCE IS REQUESTED)

12670 E COCHISE
↑ ↑ SCOTTSDALE AZ

TO BE COMPLETED BY YOUR COORDINATOR

ARTICLE AND SECTIONS OF ZONING ORDINANCE TO BE VARIED

Article 01, Section 6.1070.B.1.6

SCOTTSDALE ZONING REQUIRES

MAX HEIGHT = 24-ft

APPLICANT'S REQUEST

28-ft HEIGHT

AMOUNT OF VARIANCE

4-ft

PROCEDURES OF THE BOARD OF ADJUSTMENT

There will be three notices of hearing: One on the property, two within 300 feet, and a notice will be published in the daily newspaper, at least 15 days before the hearing, and a notice will be mailed to adjacent property owners, within 300', at least 15 days before the hearing.

The Chairman shall determine what parties are available to represent the applicant, and they shall present the case. The staff will be heard, then those in favor or in opposition. After arguments have been heard, the party representing the owner will have an opportunity for rebuttal after which the Chairman may declare the questioning and argument closed. A vote will then be taken on the matter of approval or denial.

No variance shall be granted resulting in any changes in the uses permitted in any zoning classification or which constitute special privilege.

The application and all maps, plans and other accompanying data and material shall be available for public inspection during office hours at the office of the building official.

A notice of hearing will be mailed to the applicant 6 days before the hearing.

For information regarding applications please call: 994-7080.

ATTACHMENT #2



Justification For
Requested Variance



CASE # 304 - PA - 03

PROJECT # 304 - PA - 03

APPLICANT TO FILL OUT THIS PORTION

Address Where Variance is Requested

12670 E COCHISE
SCOTTSDALE ARIZONA

JUSTIFICATION

Must Be Completed Fully By Applicant (All Four Justifications Must Be Satisfied)

1. That there are special circumstances applying to the property referred to in the application which do not apply to other properties in the District. The special circumstances must relate to the size, shape, topography, location or surroundings of the property at the above address.

OUR PROPERTY IS IN THE CENTER OF EXISTING
SURROUNDING PROPERTIES ALREADY DEVELOPED
WITH RIDGE HEIGHTS EXCEEDING 24'

2. That the authorizing of the variance is necessary for the preservation of the privileges and rights enjoyed by other properties within the same zoning classification and zoning district.

THE EXISTING HOMES SURROUNDING THIS
PROPERTY HAVE BEEN BUILT BENEFITING BY
THE ~~26~~²⁸' RIDGE HEIGHT
(28')

3. That special circumstances were not created by the owner or applicant.

THESE SURROUNDING PROPERTIES WERE
ALREADY EXIST'G WHEN THE PROPERTY WAS
PURCHASED AND C.O.S. STARTED ADOPTING
REDUCED RIDGE HEIGHTS.

4. That the authorizing of the application will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general.

THE ~~26~~²⁸' RIDGE HEIGHT PROPOSED WILL NOT
A NEGATIVE AFFECT ON THE SURROUNDING
AREA BECAUSE THIS HEIGHT IS IN THE
NORM WITH THE EXISTING HOMES.

ATTACHMENT #3

- ☐ Rezoning ☐ Other
☐ Use Permit
☐ Development Review
☐ Master Sign Programs
☒ Variance D.A.A.

Case # 304 PA 03 / 204 -PA- 03
Project Name DAVID KHALAT
Location 12670 E COCHISE
Applicant DAVID KHALAT

SITE DETAILS

Proposed/Existing Zoning: R1-43 ESL
Use: RES

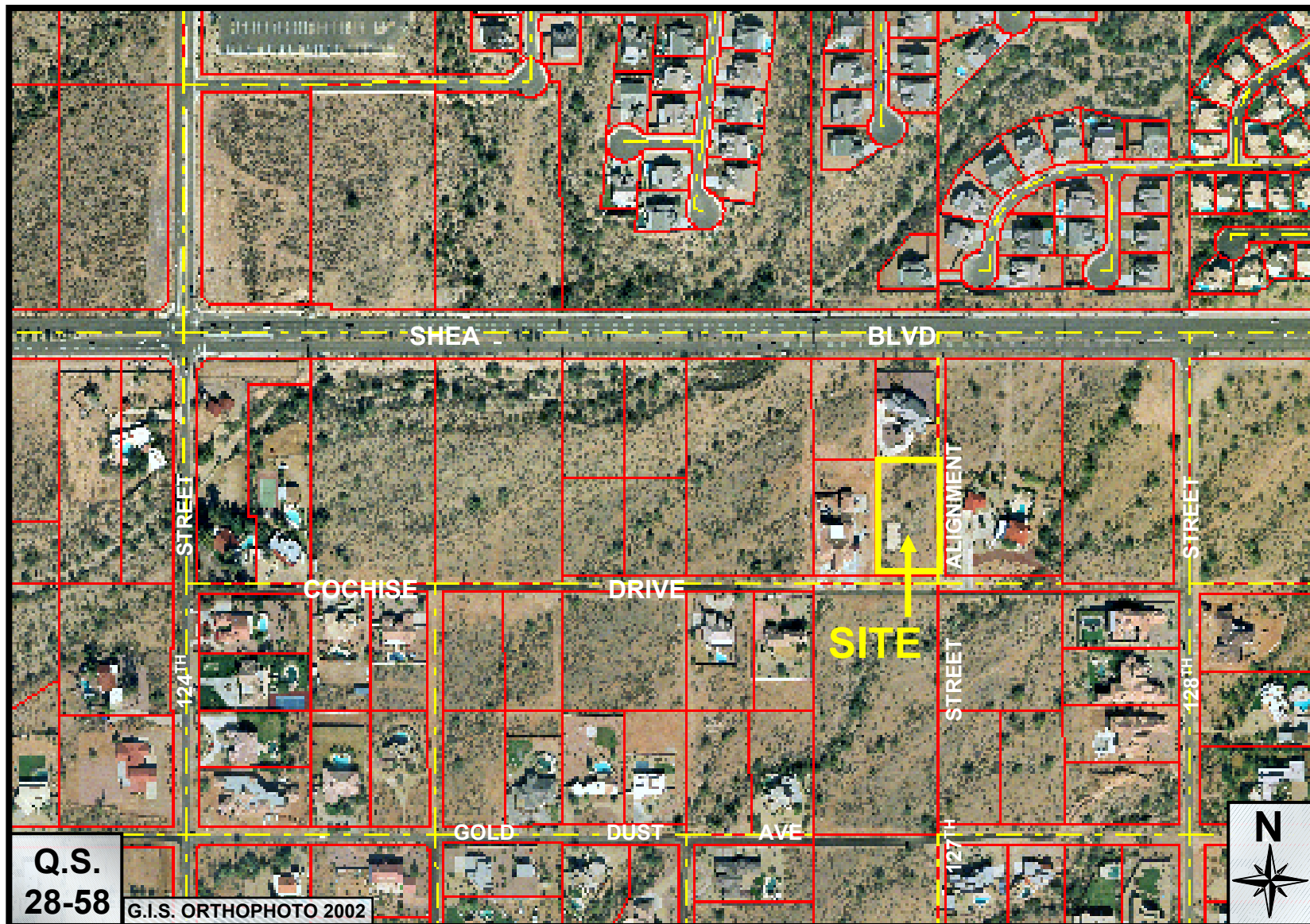
Parcel Size: 1.162 AC

- ☐ Gross Floor Area ☐ Total Units:
☐ Floor Area Ratio ☐ Density:

Parking Required: _____
Parking Provided: _____
Of Buildings: _____
Height: _____
Setbacks: N- _____ S- _____
E- _____ W- _____

In the following space, please describe the project or the request

- ON APRIL 25 2003 WE SUBMITTED AN APPLICATION TO DEVELOP AN 11,000 SQ FT HOME IN SCOTTSDALE. IN THE 1ST REVIEW OF CDS IT WAS NOTED THAT THERE IS A 24' MAX RIDGE HT REQUIRED IN THIS AREA. THIS IS INCONSISTANT BASED ON PHONE VERIFICATION W/ PLANNING & ZONING. AFTER SEVERAL CALLS TO VERIFY THIS, IT WAS NOTED ON MAY 1ST 2003 A NEW CODE WAS ENFORCED TO REDUCE THE RIDGE HT TO 24'
- THERE ARE 2 ISSUES THAT NEED TO BE ADDRESSED CONCERNING THIS CODE.
 - OUR SUBMISSION WAS LOGGED BEFORE MAY 1ST
 - THIS PROPERTY IS IN THE CENTER OF AN ESTABLISHED AREA OF WHICH ALL RIDGE HTS ARE ABOVE 24'
- WE REQUEST PERMISSION TO BUILD TO A 28' MAX RIDGE HT CONSISTANT W/ SURROUNDING PROPERTIES



Khalaj Residence

6-BA-2003

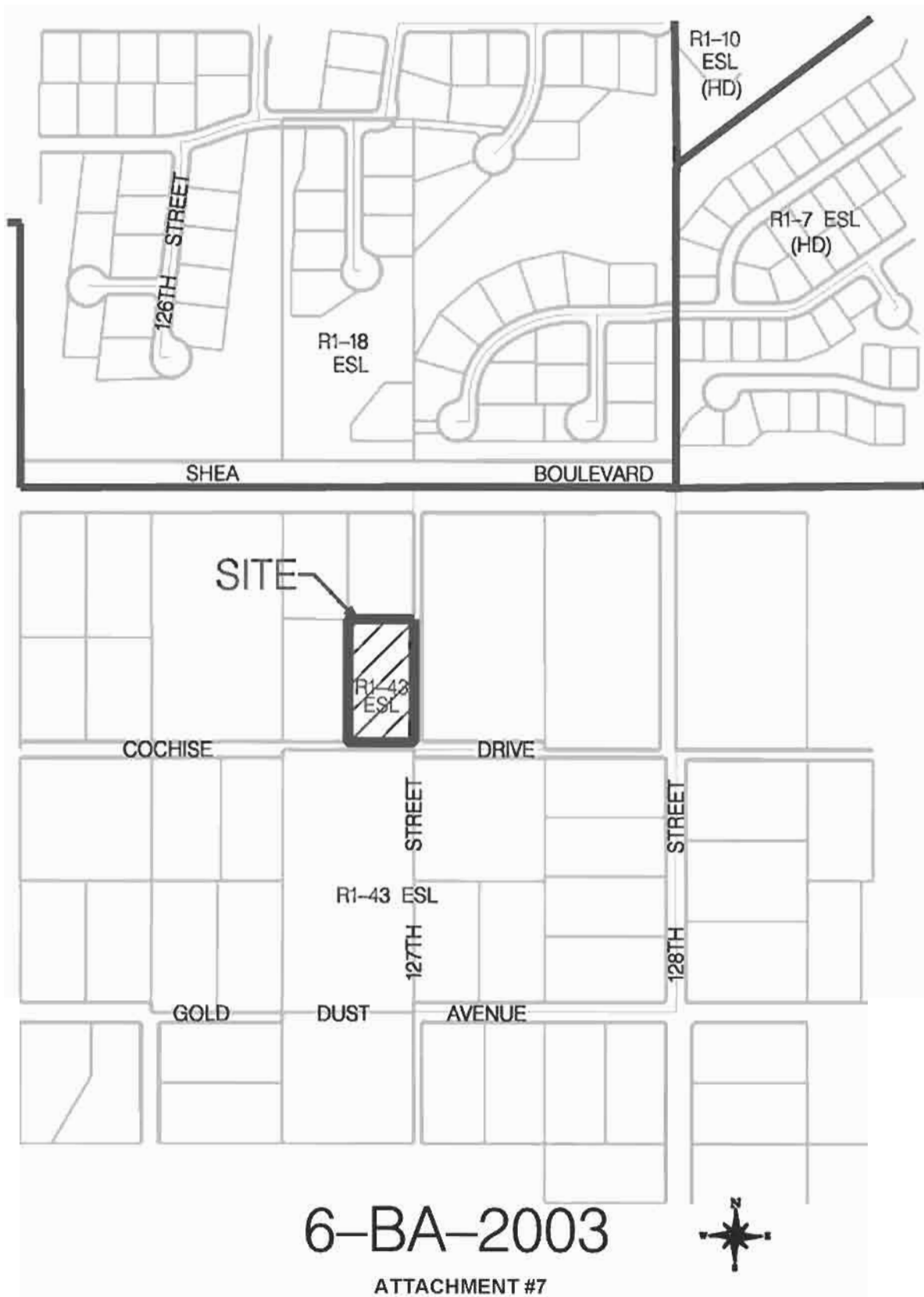
ATTACHMENT #5



Khalaj Residence

6-BA-2003

ATTACHMENT #6







12650 East Cochise Drive

Building #1



12645 East Cochise Drive

Building #2



12730 East Cochise Drive

Building #3



10390 North 128th Street

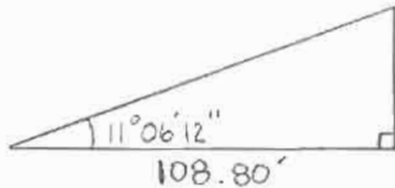
Building #4



10330 North 128th Street

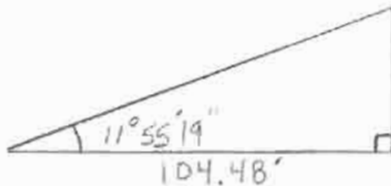
Building #5

Building #1 – 12650 East Cochise Drive:



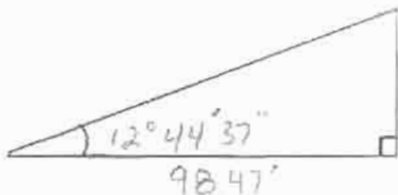
$$21.35' + 5.7' \text{ ROD HGT} = 27.05' \text{ PEAK}$$

Building #2 – 12645 East Cochise Drive:



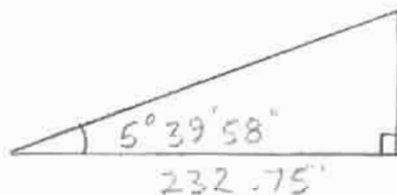
$$22.06' + 5.7' \text{ ROD HGT} = 27.76' \text{ PEAK}$$

Building #3 – 12730 East Cochise Drive:



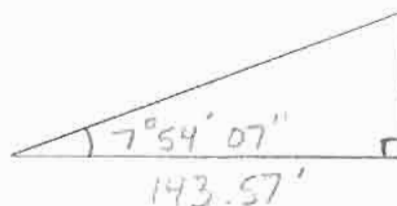
$$22.27' + 5.7' \text{ ROD HGT} = 27.97' \text{ PEAK}$$

Building #4 – 10390 North 128th Street:

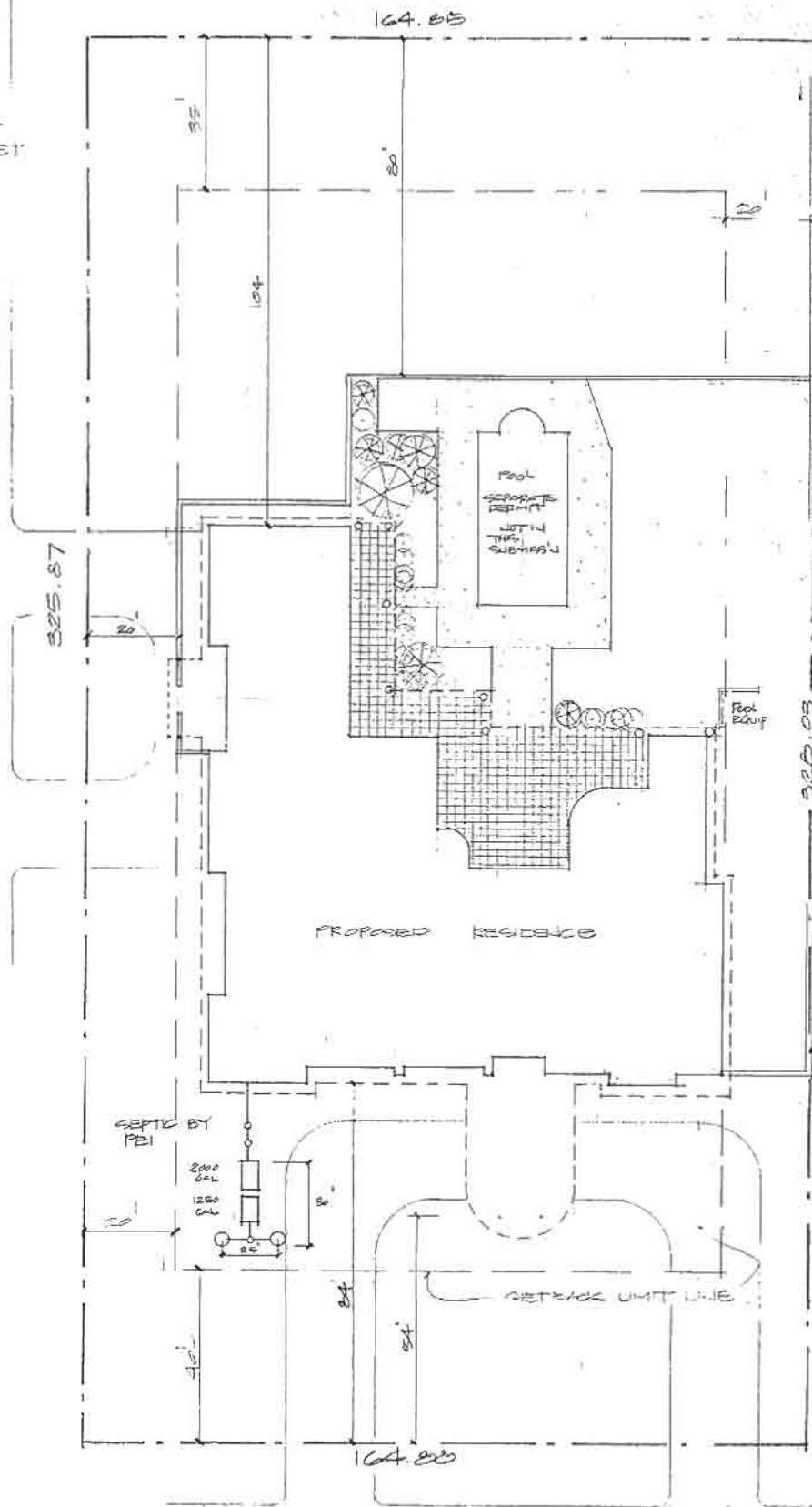


$$23.09' + 5.7' \text{ ROD HGT} = 28.79' \text{ PEAK}$$

Building #5 – 10330 North 128th Street:



$$19.92' + 5.7' \text{ ROD HGT} = 25.62' \text{ PEAK}$$



SITE PLAN

20-0

2011/11/10

MR. MRS. DAVID KTWAL
443 E. CLAUDE BLVD
PHX ARIZONA 85046
JOB SITE
12670 E. COCHISE
SCOTTSDALE ARIZONA

DRAWING SITE PLAN

DATE 4-21-03
PAGE 12 of 12

— 4 —

PLANNING & DESIGN
FINAL INTIMATE APPROX
... the design of constructive
VITO BASCOL
207 S. RICH. CHAMBERS. 180-20

BOARD MEMBER WALSH MOVED FOR APPROVAL OF THE MAY 7, 2003 MINUTES AS SUBMITTED. BOARD MEMBER SANDS SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY BY A VOTE OF FOUR (4) TO ZERO (0).

BOARD MEMBER PERICA MOVED TO APPROVE THE JUNE 4, 2003 MINUTES AS SUBMITTED. BOARD MEMBER WALSH SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY BY A VOTE OF FOUR (4) TO ZERO (0).

REGULAR AGENDA

3. **6-BA-2003** (Khalaj Residence) applicant/owner, for a variance from the 24-foot height restriction to allow a 28-foot ridgeline on a property located at 12670 E Cochise Drive with Single Family Residential, Environmentally Sensitive Lands zoning (R1-43 ESL

CHAIR VAIL explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment. Chair Vail pointed out that the applicant must receive four affirmative votes for approval of the variance, and offered the applicant the opportunity to request a continuance before or after the discussion, as only four Board Members were present

MR. ALAN WARD, staff planner, presented the case per the staff packet. He reviewed the applicant's request, and noted that the City had received two letters in support and one phone call expressing concerns. Mr. Ward went on to state that the applicant's request had been submitted prior to the effective date of the 24-foot requirement, but that the ordinance in effect at the time required a height no greater than 26 feet.

BOARD MEMBER PERICA inquired as to the City's protocol to inform the public regarding pending ordinances and adoption time. Mr. Jones responded that newspaper notice is a statutory requirement, and that signs were posted, post cards were sent to residents in the area, and open houses were held to inform the public. He added that the ordinance, once adopted, becomes effective 30 days after the approval date.

BOARD MEMBER PERICA also asked about the average length of time for permit approval. Mr. Jones replied that the first review averaged 30 days, with second and third reviews approximately 15 days.

BOARD MEMBER WALSH asked if the professionals working with the applicant had previous experience in working with the City of Scottsdale and familiarity with

the time required to obtain a building permit. Mr. Ward indicated that he was unable to respond to the question.

(Chair Vail opened public testimony)

MR. WILLIAM MILLER, representing the applicant, addressed the Board. Mr. Miller pointed out that his reading of the special circumstances required by the first criteria was contingent upon the date the plans were submitted. He stated that the plans had been submitted on April 24, 2003 and that the notice of the new ordinance did not apply until May 1, 2003. He cited the "First in time, first in right" doctrine, and stated his assertion that the doctrine was the basis for a due process argument upholding the primacy of the April 24, 2003 submittal date. He also noted that he had been unable to find any ordinance requirement regarding the date of the building permit. Mr. Miller referred to the eleven thousand square foot for the proposed residence, and stated that the 28-foot height was necessary for a dwelling of that size. Mr. Miller observed that the adjacent homes have heights of 28, 29, and 27 feet and that a 28-foot variance as requested by the applicant would have no impact on the neighboring residences or their view.

MR. DAVID KHALAJ, applicant, addressed the Board and expressed his commitment to ESLO principles and preservation of the neighborhood. Mr. Khalaj provided evidence of his community involvement in Ahwatukee, and stated that he simply wanted to build a beautiful home in the north Scottsdale area.

MR. VITO DASCOLI, Intimate Approach Architects, commented on the size of the home and the need for a ridgeline that would be proportional to that size. He referred to the fact that the setbacks and lot coverage were governed by zoning ordinance and that the size of the home was within the allowable square footage. He noted that the other homes in the area have a similar ridge height.

BOARD MEMBER PERICA noted that the ordinance at the time of the application for the building permit stated that the maximum height was 26 feet. Mr. Dascoli replied that he was aware of that and based on the needs of the family and the desire to match other residences in the area, and decided to proceed with the 28 feet and take the necessary steps to obtain approval.

MR. JOHN KOSOV, Kodiak Builders, reiterated from a builder's perspective, the need for the ceiling heights as stated for a home of 11,000 square feet.

(Chair Vail closed public testimony.)

BOARD MEMBER WALSH asked for legal clarification regarding the issue of whether the permit date or the application date governed. Ms. Villalpando suggested that Mr. Miller conclude his presentation before she responded to the question.

MR. MILLER once again referred to the “First in time, first in right” doctrine, noting that his argument was based on Common Law of the State of Arizona.

CHAIR VAIL inquired as to whether the primacy of the date of the permit rather than that of the application had been written as part of the Ordinance or if it was an administrative decision. Ms. Villalpando replied that it was neither, but rather the City’s understanding of Common Law. She went on to state, that in her opinion, the “First in time, first in right” doctrine relates to a different area of the law. Ms. Villalpando observed that City Council had chosen not to include a grandfather clause in the latest ESLO update, and that the applicant did not have a vested right to the 26-foot height.

BOARD MEMBER WALSH addressed the issue of special circumstances and stated her view that this was an esthetic issue. She referred to an obligation by the Board to uphold City code. Board Member Walsh noted that the applicant’s plans would not have been in compliance with the existing code at the time of the permit submittal and that the applicant must have known he would have to come before the Board for a variance anyway.

CHAIR VAIL inquired as to whether or not a 26- foot ridgeline would be satisfactory to the applicant. Mr. Miller replied that it would.

CHAIR VAIL observed the heights of the residences surrounding the subject property and noted that there would be no problem with obstruction of views to the north, east and west, and that there was no residence to the south. He commented that he could conceivably justify the four criteria, but at a height of 26 feet, rather than 28 feet. Chair Vail asked for direction from Ms. Villalpando as to a vote to approve a 26-foot variance instead of 28 feet. He also asked, in the event a vote to approve the 28-foot variance was denied, if that would be interpreted as a material change, or whether the one-year statutory requirement for reapplication would apply. Ms. Villalpando replied that the applicant would have to resubmit a new application for a 26-foot variance and that the Board had the authority to determine the issue of a material change. If the Board determined that there was a material change, the matter could be resubmitted and a hearing scheduled. Ms. Villalpando also advised that provisions for notice must be met prior to a new hearing.

BOARD MEMBER WALSH stated that she adhered strictly to the parameters imposed by law upon the Board and that she would not be disposed to vote in favor of a 26-foot variance in light of the ESLO update. Ms. Villalpando cautioned against discussing an issue not currently before the Board.

MR. MILLER asked for approval of a continuance on the application zoning process hearing in order for the applicant to resubmit plans consistent with the law in effect as of April 24, 2003. He requested further that the Board of

Adjustment reconvene its September 3, 2003 meeting and consider the issues based on a 26-foot rather than a 28-foot application.

BOARD MEMBER PERICA MOVED TO CONTINUE CASE 6-BA-2003 TO THE SEPTEMBER 3, 2003 MEETING. BOARD MEMBER WALSH SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY BY A VOTE OF FOUR (4) TO ZERO (0),

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 7:08 p.m.

Respectfully submitted,

"For the Record" Court Reporters